

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM FIGUEROA,

Petitioner,

20-cv-3013 (JGK)

- against -

ORDER

KEYSER,

Respondent.

JOHN G. KOELTL, District Judge:

The Court has received the attached letter from the petitioner. The petitioner apparently asks for discovery in connection with his prior criminal convictions. The petitioner has not yet exhausted his state court remedies in connection with his current application before this court. Any request for discovery should be directed to the state court. To obtain discovery in connection with his federal habeas petition, the petitioner would need to show good cause, which he has not yet shown.

SO ORDERED.

Dated: New York, New York
February 22, 2021

/s/ John G. Koeltl
John G. Koeltl
United States District Judge

Mr. William Figueroa-91-A-2142
Sullivan Correctional Facility
P.O. Box 116
Fallsburg, New York

February 16, 2021

Hon. John G. Koeltl
United States District Judge
Daniel Patrick Moynihan United State Courthouse
500 Pearl Street
New York, New York 10007

Re: Figueroa v. Keyser, No. 20 Civ. 3013 (JGK) (RWL)

Your Honor:

PLEASE TAKE NOTICE, I William Figueroa, petitioner, duly sworn, pursuant to Title 28 U.S.C. 1746, I am writing to this Court requesting that it intervene on my behalf a basis of sealed minutes of the ex parte discussion between Justice Michael L. Pesce and the trial prosecutor, Marianne Crosley's Esq., "repeated private access" concerning pretrial disclosure of a copy of the June 5, 1990 conference minutes, which the prosecution sent to the trial court's, is now a part of the record, and the non-disclosed DD-5 report numbered 176 and 197, there is no affirmation (either direct or implied) made by me or counsel that he knowingly, intelligently and voluntary waived his right to be present during the in-camera proceeding.¹

The Supreme Court has held that the "Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" Nevada v. Jackson, 569 U.S. 505, 509 (2013). The reports does not support this assertion, petitioner is not in position to carry out his own investigation to substantiate his allegation. These reports are not just Brady² there are clear evidence of petitioner's "Actual Innocent." As the Supreme Court directed in the case of In Re Davis, this Court "should receive testimony and made finding of fact" because Mr. Figueroa has made a credible claim of actual innocence. 557 U.S. 952 (2009).³

The Kings County District Attorney Office, when routinely violated defendant's due process rights under Brady/Giglio which state that statutes of limitation often prevent defendant has a constitutional right to present evidence before the jury as to the circumstance under which

¹ Petitioner incorporates by reference the prior contention in his opposition to respondent's letter dated February 3, 2021 pursuant to this Court's January 27 Order (ECF #34).

² See Brady v. Maryland, 373 U.S. 83 (1963).

³ Even if defense counsel had known of the hearing in the Eddie Garcia statement that contained the real perpetrator name and statements he did not know that any such evidence or information was favorable to his client, but the prosecution did. It is obvious that the People are still attempting to hide Brady material from petitioner

his trial attorney were prohibited from reviewing and/or possessing what was or has known to the District Attorney's Officer, to be inter alia" police report 176 & 197 until 2018, when they finally responded to defendant January 23, 2018 motion to renew he August 23, 1991 motion to vacate the judgment of conviction, pursuant to C.P.L. §440.10.⁴ For the least 32 years, spanning from 1990 and 2021 the petitioner sought production of the still missing DD-5 reports 176 & 197.

At the very least, seven days after the shooting, Eddie Garcia identified Manuel Rivera at a police interview by P.O. Rosario in which stated for the second time he had killed Maria Hernandez. When these two DD-5 reports numbered 160 and 202 relating to Eddie Garcia is crucial important to the defense which was made so late as to prevent the defense from using the material effectively in preparing or presenting its case.⁵ This may explain the serious improprieties in the People which have obviously conceded that the trial prosecutor violated its disclosure obligation by delaying until the eve of trial the disclosure of DD-5 reports numbered 160 and 202, which relate to the admission of Eddie Garcia.⁶

Wherefore, this Honorable Court is respectfully urged to order the Assistant Attorney General to produce the requested examination the still missing DD-5 reports 176 & 197, in all respect.⁷

Respectfully submitted,



William Figueroa

CC: Mr. Mathew Keller
Assistant Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-6072

⁴ The prosecution has failed to disclose missing DD-5 reports 176 & 197. This is an unfortunate example of former District Attorney Charles Hynes policy and practice of encouraging prosecutors to hold back exculpatory or impeaching evidence from petitioner in order to an advantage in a criminal prosecution. This is particularly true in light of the paucity of new discovered evidence or prosecutorial misconduct, can come in light.

⁵⁵ See Scrimo v. Lee, 935 F.3d 103(2d Cir. 2019) (holding that the state trial's exclusion of witness testimony as extrinsic evince on collateral matter, a discretionary rule, was an unreasonable application of Crane v. Kentucky, 106 S.Ct. 2142 and Chambers v. Mississippi, 93 S. Ct. 1038).

⁶ See Exhibit A.

⁷ Based on Garcia v. Herbert, 2018 WL 6272778, at *2 (E.D.N.Y. 2018) decision Judge Weinstein, Senior United States District Judge noted that: "[I]t [is] the duty of every judge and every court to examine its own decisions, and the decision of other courts without fear and to revise them without reluctance." Baker v. Lorillard, 4 NY 257, 261 (1850).

EXHIBIT A

Height	Weight	Eye Color	Hair Color	Hair Length	Facial Hair	Handedness	NYSD ID
Date Time Results Same as Comp Report - Different (Explain in Details) <input type="checkbox"/> Yes <input type="checkbox"/> No							18 DOX 1
Date Time Results Same as Comp Report - Different (Explain in Details) <input type="checkbox"/> Yes <input type="checkbox"/> No							DOX 2
Time, Date, U Crime Scene Visited <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes - Make Entry in Details Re Time, Date, Evidence Collected							19 DOX 1
Crime Scene Photos <input type="checkbox"/> Yes <input type="checkbox"/> No By (Enter Results in Details)							DOX 2
and State Justification in Details: Accurate Facts <input type="checkbox"/> C-3 No Evidence/Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant							20 PERP
Of Eddie Garcia (C-3 No Evidence/Can't ID)							21 PERP 1
PO Rosario, 83Pet Comm Relations, translated for Eddie Garcia who called the 83BQD, and stated the following. he called telephone / 821-8281 looking to speak to his friend speaking to Rivera Rivera stated that he was scared and was o Rico because he killed Maria Hernandez. Rivera stated to d \$1,000 by Julio Enrique Martinez and that he used a .38 gun tiner is a drug dealer and his brand name is STARR and that ez stay in Bushwick Park. uerto Rican 28yrs 5'7 160lbs Aka LINDIO ,M/B Puerto Rican, 32yrs 5'9 med build, dirty blond hair, full d on \$3,500 bail for drug sale.							22 PERP 1 PERP 2
any 1000 as Alex Garcia, Luis Garcia Jose Garcia, Jose Maldana.							23 PERP 1 PERP 2
Name Printed Det O'Keeffe Title Registry No 863961 Supervisor's Signature Sgt A. [Signature] C.O.'s Initials							24 PERP 1 PERP 2
Date 11	Date 12	Date 13	Date 14	Date 15	Date 16	Date 17	Date 18

UNIT REFERRED TO

Address, include City, State, Zip						Apt. No.		Res. Pct.		17
Height		Weight	Eye Color	Hair Color	Hair Length	Facial Hair	INVSID No.			CHOICE 1
										CHOICE 2
Y. FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."										18
Date	Time	Reasons Same as Comp. Report - Different (Explain in Details)								CHOICE 1
		<input type="checkbox"/> <input type="checkbox"/>								CHOICE 2
Date	Time	Reasons Same as Comp. Report - Different (Explain in Details)								
		<input type="checkbox"/> <input type="checkbox"/>								
Time, Date, No.		Crime Scene Visited		X Yes - Make Entry in Details (In: Time, Date, Evidence Obtained)						19
		<input type="checkbox"/> Yes <input type="checkbox"/> No								CHOICE 1
										CHOICE 2
										20
		Crime Scene Photos		By (Enter Results in Details)						PERP 1
		<input type="checkbox"/> Yes <input type="checkbox"/> No								
State Justification in Details:										PERP 2
Inaccurate Facts <input type="checkbox"/> C-3 No Evidence/Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant										
Incident Interview Of Eddie Garcia.										21
										PERP 1
										PERP 2
10hrs the reported accompanied by Det Martinez, 83 ed person at Bronx House Of Detention. d had been interviewed by phone on 8/14/89 by e DD 5 #160. he had a second phone conversation with a male Hisp ra on 8/16/89 in which Rivera stated for the second d Maria Hernandez. Garcia stated he was told by a was paid \$1,000 by Julio Enrique Martinez to shoot endez or her husband Carlos. Rivera once again en a .38 gun by Martinez to do the shooting. was told by Rivera that Rivera walked onto the block mask and saw that lights were on in the Hernandez home some one was walking around inside, firing five shots he is going to call Manuel Rivera on 8/18/89 and will nez on that date with more information. own photos by the reporter and Identified photos) and DOEL SANTIAGO. He stated he has known them for ay come from his home town in Salinas Puerto Rico. ily to live at Urbanization Brisa del Mar (Winds of X. at the Santiago brothers know Julio Enrique and that go they had an argument over drug spots. Garcia also does not think the SANTIAGO brothers know Manuel at Martinez put out contract on the Hernandez;s hed the dealers off the block. Garcia also stated ves in area of 83Pct, can show the house, and that g with him. He also states there is numerous guns use.										22
										PERP 1
										PERP 2
										23
										PERP 1
										PERP 2
										24
										PERP 1
										PERP 2
Name Printed 3800 Det O'Keefe 863961										
Tax Registry No. Supervisor's Signature Sgt. Anderson										
CD's Initials										
Choice 1 Choice 2 Page 1 Page 2 Page 1 Page 2										